

SUBCHAPTER B : WATER RIGHTS ADJUDICATION

§86.11. General.

(a) Applicability. This subchapter applies to the commission's duties, responsibilities, and activities under the Water Rights Adjudication Act of 1967, Texas Water Code, §§11.301, et seq.

(b) Motions. A motion may be filed with the commission as provided by §80.56 of this title (relating to Motions), with copies served only on those parties participating in the evidentiary hearing; except that, if there are other parties whose interests are likely to be substantially affected by the relief sought in the motion, copies shall be served on each such party or his representative.

(c) Mailing list. The commission shall maintain an official mailing list for each stream or segment being adjudicated, which shall include the following:

(1) the persons within the stream or segment being adjudicated who filed claims in accordance with Texas Water Code, §11.307;

(2) all other persons who filed claims under Texas Water Code, §11.303, or who have permits or certified filings within the segment being adjudicated;

(3) all other diverters of state water within the segment being adjudicated who can be reasonably ascertained from the records of the commission or from the executive director's investigation;

(4) all attorneys or other interested persons who request to be put on the mailing list, either in writing or on the record during one of the hearings in the adjudication; and

(5) all contesting parties.

(d) Definition. As used in this subchapter, the term "mailing list" means the commission's official mailing list for the stream or segment being adjudicated.

Adopted May 8, 1996
Derived from §275.11

Effective June 6, 1996

§86.12. Prehearing Procedures.

(a) Initiation of adjudication. The water rights in any stream or segment may be adjudicated as provided in Texas Water Code, §11.304:

(1) on motion of the commission;

(2) on petition to the commission signed by ten or more claimants of water rights from the source of supply; or

(3) on petition of the Texas Water Development Board.

(b) Investigation and preparation of investigation report. Promptly after an adjudication is initiated under Texas Water Code, §11.304, the commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest.

(1) If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated and directing the executive director to investigate the area involved to gather relevant data and information essential to the proper understanding of the claimed water rights involved. The results of the investigation shall be reduced to a written report and made a matter of record in the commission's office. This report shall be available for public inspection during regular business hours of the commission at its offices in Austin.

(2) In connection with the investigation, the executive director shall have a map or plat made showing, with substantial accuracy, the course of the stream or segment, and the location of reservoirs and diversion works and places of use, including irrigated lands which are relevant to the alleged water rights involved.

(c) Notice of adjudication. The commission shall prepare a notice of adjudication describing the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment must be filed with the commission under Texas Water Code, §11.307.

(1) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(2) The notice shall be sent by first-class mail to all persons on the mailing list.

(3) The notice required under Texas Water Code, §11.308 may be incorporated with the notice required by this rule and Texas Water Code, §11.306.

(d) Filing of claims. Every person claiming a water right of any nature, except for domestic and livestock purposes, from the stream or segment under adjudication, shall file a sworn claim under Texas Water Code, §11.307 within the time prescribed in the notice of adjudication or any extension.

(1) Sworn claims should state:

(A) the name and mailing address of the claimant;

(B) the nature of the right claimed, including the number of any permit, certified filing or claim filed under Texas Water Code, §11.303;

- (C) the maximum acre-feet of water claimed;
- (D) the purpose of use claimed;
- (E) the date of first diversion of state water for other than domestic or livestock purposes;
- (F) the earliest priority date claimed;
- (G) the source of water;
- (H) a description of diversion works;
- (I) the maximum total diversion rate claimed;
- (J) a description of impounding facilities, including the location, whether it is on-channel or off-channel, and the impounding capacity, surface area, and average depth at normal maximum operating level;
- (K) the maximum number of acres per year if an irrigation right is claimed; and
- (L) all other information necessary to show the nature and extent of the claim.

(2) The commission shall prescribe forms for claims filed under this rule, but use of commission forms is not mandatory.

(3) The commission may extend the time for filing claims under this rule and Texas Water Code, §11.307 and may accept a claim filed beyond the deadline or any such extension.

(4) All water rights claimants, except users of water for domestic or livestock purposes, shall file a sworn statement of the claim of right with the commission. Failure to file a sworn statement under this provision in accordance with the commission's notice of adjudication bars the recognition of any right in the claimant.

(e) Notice of hearings. The commission shall set a time and place for hearing of all claims in the stream or segment being adjudicated.

(1) The commission shall give 30 day's notice of the commencement of the hearings by certified mail to all persons on the mailing list as described in paragraphs (2) - (4) of this subsection. This notice may be included in the notice of adjudication provided for in Texas Water Code, §11.306.

(2) The commission shall schedule individual evidentiary hearings for each diverter of state water within the segment being adjudicated who can be ascertained from the records of the

commission or from the executive director's investigation. The commission shall give notice by first-class mail to all other persons on the mailing list.

(3) A final docket of hearings will be scheduled as necessary for individual claims that were continued during the regularly scheduled hearings. Notice of the date, time, and place of these hearings will be mailed by certified mail to each person appearing on the docket and by first-class mail to all other persons on the mailing list.

(4) The commission may continue hearings from time to time and place to place. At the time of continuation, the commission shall state on the record the date, time, and place of the subsequent hearing. If unknown at the time of continuation, the commission shall give notice of the date, time, and place of the subsequent hearing to all parties on the mailing list.

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Derived from §275.12

Effective June 6, 1996

§86.13. Jurisdiction Hearing.

(a) Purpose. Hearings in each adjudication segment will begin with a hearing to establish the commission's jurisdiction to adjudicate all claims of water rights in the stream or segment and to provide information concerning the adjudication.

(b) Procedure. Exhibits will be introduced to evidence jurisdiction. The qualifications of the project engineer or project manager, and any assistants, will be examined and ruling made on their abilities to testify in the upcoming individual evidentiary hearings as expert witnesses. The expert witnesses so qualified will remain under oath throughout all hearings in the adjudication of the stream or segment.

(c) Question and answer. The commission will entertain questions of general concern to all parties in the adjudication from any person attending the hearing.

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Effective June 6, 1996

§86.14. Procedure at Individual Evidentiary Hearings.

(a) Opening statements and exhibits. The commission will call up the individual claim and entertain any opening statement on behalf of any party. Exhibits may be tendered into evidence after the parties present are provided an opportunity to view them.

(b) Order of presentation. Unless otherwise directed by the commission, the hearing will proceed as follows:

(1) after the introduction of exhibits, the project engineer or project manager will orient the parties to facts concerning the claim derived from his investigation;

- (2) the claimant will present evidence concerning the claim;
- (3) the executive director may then present evidence;
- (4) upon completion of presentation by the claimant and the executive director, any other party may offer relevant evidence; and
- (5) closing arguments will be entertained.

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§86.15. Preliminary Determination.

(a) Preparation of judge's recommendations. A judge presiding at the individual evidentiary hearings or one who has read the record shall prepare written recommendations, including proposed findings of fact and conclusions of law, in regard to each individual claim and shall submit his recommendations and the record of the hearing to the commission for its consideration.

(b) Preparation of preliminary determination. After reviewing any judge's recommendations and the record of the hearings, the commission shall adopt a preliminary determination of all claims of water rights in the segment being adjudicated as required by Texas Water Code, §11.309.

(c) Distribution of preliminary determination. One copy of the preliminary determination shall be furnished and sent without charge by first-class mail to each person on the mailing list. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin as designated by the commission. Copies shall also be made available for other persons at a reasonable price based upon the cost of production.

(d) Public inspection of record. The record of the hearings shall be open to public inspection as required by the Public Information Act, and Texas Water Code, §11.310.

(e) Notice of preliminary determination. The commission shall publish notice of the preliminary determination.

(1) Promptly after the preliminary determination is adopted, notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the segment that is the subject of the adjudication is located.

(2) The commission shall also send the notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission, and to other persons on the mailing list.

(3) Each notice shall state the following:

(A) the place where the preliminary determination and record of the hearings will be open for public inspection;

(B) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(C) the method of ordering copies of the preliminary determination and the charge for copies; and

(D) the date by which contests of the preliminary determination must be filed.

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§86.16. Contests to Preliminary Determination.

(a) Filing deadline. The commission shall set a date for filing contests to the preliminary determination, which shall be not less than 90 days from the date of the notice of the preliminary determination.

(b) Filing of contest. Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin, but outside the segment under adjudication, who disputes the preliminary determination may, within the time for filing contests prescribed by the commission in the notice, including any extensions of time, file a written contest with the commission.

(c) Copy of contest to claimant. If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be sent by the contestant to each of these claimants or his representative by certified mail, and proof of service shall be filed with the commission.

(d) Extension of time for filing contests. The commission may accept contests filed after the deadline but before the issuance of the notice of hearings on the contests.

(e) Contents of contests. Each contest shall do the following:

(1) state the name of the claimant, nature of the claim, and the page number in the preliminary determination to which the contest is directed;

(2) describe the specific parts of the preliminary determination to which objection is made, pointing out the specific findings of fact, conclusions of law, or other matters objected to, or specifying the findings of fact, conclusions of law, or other matters alleged to have been erroneously omitted from the preliminary determination; and

(3) describe the facts relied upon to support the grounds of the contest and be verified by an affidavit of the contestant or his representative.

(f) Amendments to contests. Amendments to contests may be authorized at any time, provided that the commission finds that the amendment will not result in undue surprise to any party and will not significantly change the grounds of the contest as described in the commission's notice of the contest hearings.

(g) Notice of hearing on contests. After the time for filing contests has expired, the commission shall prepare a notice setting forth the parts of the preliminary determination to which each contest is directed and the date, time, and place of the hearing on each contest. The notice shall be sent by certified mail to each contestant and by first-class mail to each claimant of water rights within the river basin within which the segment is located and to all other persons on the mailing list. The notice shall set a specific date, time, and place for each contestant to appear.

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Derived from §275.16

Effective June 6, 1996

§86.17. Procedure at Contest Hearing.

(a) Jurisdiction. The commission shall consider evidence concerning jurisdiction.

(b) Individual cases and order of presentation. Unless otherwise directed by the commission, the hearing will proceed as follows:

(1) the contestant and all other parties may make opening statements;

(2) the project manager or project engineer will orient the commission and the parties to the claim involved in the contest;

(3) the contestant will present evidence in support of the contest;

(4) evidence may be presented by the executive director;

(5) any other party may present evidence relevant to the particular contestant's case.

(c) Legal argument. Oral arguments may be permitted by the commission upon request, but the commission will prescribe reasonable limits.

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§86.18. Final Determination and Appeal.

(a) Proposed final determination. When a majority of the commission has not heard the contest or read the record, the judge who presided at the contest hearing or one who has read the record shall prepare a proposal for final determination and shall send it by first-class mail to all persons on the commission's

mailing list. The proposed final determination shall contain a statement of the reasons therefore and a statement of each finding of fact and conclusion of law stated separately necessary to support the proposed final determination. Any party adversely affected may file exceptions and present briefs to the commission concerning the proposal for final determination within the time limit stated in the notice of the proposal for final determination. The parties may waive compliance with this rule by written stipulation filed with the commission.

(b) Final determination. The adjudication hearings shall be closed at the conclusion of the last contest hearing. The commission will make a final determination of the claims to water rights in the adjudication within 60 days after the closing of the adjudication hearings, provided that where the case was not heard by the commission, the judge may set a reasonable time for the issuance of a final determination and shall announce such extension at the closing of the adjudication hearings. The commission shall send a copy of the final determination, and any modification thereof, by first-class mail to each person of record on the mailing list as required by Texas Water Code, §11.315.

(c) Notice of final determination. The commission shall send a notice of the final determination by first-class mail to each claimant of water rights within the river basin in which the segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission, and to each other person on the commission's mailing list.

(1) Each notice shall state the following:

(A) the place that the final determination and record of hearings will be open for public inspection;

(B) the method of ordering copies of the final determination and the cost of copies; and

(C) the date by which applications for rehearing must be filed, which shall be 30 days from the date of issuance of the final determination.

(2) The commission shall provide in the final determination and notice thereof the effective date of the determination in order to provide a sufficient period of time within which the determination and notice can be printed and mailed.

(d) Application for rehearing of final determination. An application for rehearing is the same as a motion for rehearing under the APA, and is a prerequisite to filing an exception to the final determination under Texas Water Code, §§11.318, et seq.

(1) If an application for rehearing is granted, the commission shall issue notice setting forth the substance of the application and setting the time and place of the hearing. Notice shall be sent in the same manner provided for in contest hearings.

(2) If the final determination is modified after a rehearing, the commission shall send a copy of the modified final determination by first-class mail to each person on the mailing list. However, if the modifications are such that they are likely to substantially affect the rights of other water right holders within the basin but outside the watershed or segment being adjudicated, then a summary of the modifications shall also be sent to all other water rights holders in the basin.

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Chapter 86 - Special Provisions for Contested Case Hearings
Subchapter B : Water Rights Adjudication

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
86.11	275.11
86.12	275.12
86.13	275.13
86.14	275.14
86.15	275.15
86.16	275.16
86.17	275.17
86.18	275.18